

REMARKS

In the Office Action mailed February 23, 2004, the Examiner noted that the Terminal Disclaimer filed on September 29, 2003, had been reviewed and was not accepted although the Terminal Disclaimer was recorded. The Examiner objected to the Terminal Disclaimer stating: "...the instant application ownership, right, title and interest in and to has not been established in the Terminal Disclaimer filed.

Accordingly, Applicants submit herewith a newly executed Terminal Disclaimer disclaiming any portion of a patent granted on the subject application which would extend beyond the term of U.S. Patent No. 6,672,006 and which states that the instant application and U.S. Patent No. 6,672,006 are 100% owned by a common entity. Therefore, it is respectfully submitted that the Terminal Disclaimer filed herewith is in proper form and entry of same is hereby requested.

In the Office Action, the Examiner objected to the disclosure stating that paragraph [0001] should be updated to reflect the patent status of application 10/449,319. Applicants have, by the present amendment, amended the disclosure to update paragraph [0001] to correctly reflect the patent status of application 10/449,319. Accordingly, it is Applicants' belief that the Examiner's objection to the specification has been obviated.

In addition, the Examiner noted that the lengthy specification had not been checked to the extent necessary to determine the presence of all possible minor errors, and requested Applicants cooperation in correcting any errors of which Applicants may determine in the specification. Applicants have reviewed the specification and minor errors have been detected in paragraph [0001] and such paragraph has been amended.

In the Office Action mailed February 23, 2004, the Examiner objected to claims 9-12 stating that the claim dependencies as cited was in error. The Examiner then stated that the dependencies should read 8, 9, 10 and 8, respectively, for dependent claims 9-12, and that the application has been prosecuted accordingly.

By the present Amendment, Applicants have amended the dependencies of claims 9-12 to provide their proper dependency. Thus, it is respectfully submitted that the Examiner's objection to such claims has been obviated.

In the Office Action the Examiner rejected Applicants' claims 1-12 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 8 of U.S. Patent No. 6,672,006. The Examiner stated that a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

It is respectfully submitted that the before stated rejection of claims 1-12 based on a judicially created doctrine of obviousness-type double patenting has been obviated by the filing of a Terminal Disclaimer herein, showing ownership of the subject application with the '006 patent.

By the present amendment, Applicants have amended claims, 1, 3, 6, 8, and 10 to set forth the inventive concept which Applicants believe Applicants are entitled based upon the prior art known to Applicants. In addition, the dependency of claims 9-12 has been amended to read 8, 8, 10 and 8, respectively.

Claim 1

Claim 1 has been amended to incorporate the word “collapsed” in place of “flattened” when describing the movement of the preformed shape-sustaining support member between a collapsed condition and an expanded condition. In addition, the limitation that the preformed shape-sustaining support member has “oppositely disposed creases” has been deleted and the phrase “...at least one crease” has been incorporated into the claim. Thereafter, the limitation that each of the creases extend substantially from the open upper end of the preformed shaped-sustaining support member to a lower end thereof has been deleted from the claim. In addition, the limitation that a portion of the decorative cover extends a distance above the open upper end of the preformed shaped-sustaining support member also has been deleted from claim 1.

Claim 3

Claim 3 has been amended to incorporate the limitation “... and wherein the preformed shaped-sustaining support member has oppositely disposed creases formed thereon wherein each of the oppositely disposed creases extend substantially from the open upper end of the preformed shaped-sustaining support member to the open lower end thereof...”.

Claim 6

Claim 6, which depends from claim 1, has likewise been amended to include the limitation “...and wherein the preformed shaped-sustaining support member has oppositely disposed creases formed thereon wherein each of the oppositely disposed creases extends substantially from the open upper end of the preformed shaped-sustaining support member to the open lower end thereof...”.

Claim 8

Claim 8, another independent claim, has been amended similarly to claim 1. That is, the preformed shaped-sustaining support member have been amended to state that it is "...moveable between a "collapsed" condition and an expanded condition..." rather than from a "flattened" condition is an expanded condition. Similarly, the peripheral sidewall of the preformed shaped-sustaining support member has been defined as having at least one crease. Therefore, the limitation that the sidewall have oppositely disposed creases and "each of the oppositely disposed creases extending substantially from the open upper end of the preformed shaped-sustaining support member to the lower open end thereof ..." has been deleted.

Claim 9 and 10

Dependent claim 9 has been amended to properly reflect its dependency from claim 8 as has claim 10. In addition, claim 10 has been amended to include the additional limitation "and wherein the preformed shaped-sustaining support member has oppositely disposed creases formed thereon wherein each of the oppositely disposed creases extend substantially from the open upper end of the preformed shaped-sustaining support member to the open lower end thereof..."

Claim 11 and 12

Dependant claims 11 and 12 have been amended to properly depend from claims 10 and 8, respectively.

Newly Added Claims

Applicants have, by the present amendment, added newly added claims 13-22. Newly added claims 13, 14, and 15 each depend from claim 1 whereas newly added claim

16 depends from claim 8. Newly added claim 13 recites that the preformed shape-sustaining support member has oppositely disposed creases thereon, and further recites that such creases extend from the open upper end of the preformed shape-sustaining support member to the lower end thereof.

Newly added claim 14 recites the limitation that a portion of the decorative cover extends a distance above the open upper end of the preformed shaped-sustaining support member.

Dependant claim 15 states that the sheet of fluid impermeable material is formed into a bag and claim 16, which depends from claim 8, recites the limitation that the preformed shaped-sustaining support member has oppositely disposed creases formed therein, and further sets forth that the creases extend substantially from the open upper end of the preformed shaped-sustaining support member to the open lower end thereof.

Newly added claim 17 is similar to claim 1, as amended, except that newly added claim 17 does not require the preformed shaped-sustaining support member to have any creased form thereon. In addition, claim 17 does not require maintaining at least a portion of the open upper end of the preformed shaped-sustaining support member substantially uncovered by the decorative cover.

Newly added claim 18, which depends from claim 17, recites that the preformed shaped-sustaining support member has oppositely disposed creases formed thereon and further states that the oppositely disposed creases extend substantially from the open upper end of the preformed shaped-sustaining support member to the lower end thereof.

Newly added claim 19, which depends from claim 18, is similar to claim 3, as originally presented.

Newly added claim 20 is substantially the same as original claim 4 except that newly added claim 20 depends from newly added independent claim 17.

Newly added claim 21, which also depends from newly added claim 17, recites that a portion of the decorative cover extends a distance from the open upper end of the preformed shaped-sustaining support member.

Newly added claim 22, which also depends from newly added independent claim 17, recites that the sheet of fluid impermeable material is formed into a bag.

The indication that Applicants' original claims 1-12 would be allowable if a proper Terminal Disclaimer was filed is hereby acknowledged with appreciation. However, in reviewing the claims, it is Applicants' belief, that such claims contained limitations which were not warranted and removable of which are necessary in order to provide Applicants with the degree of patent protection to which they are entitled. Accordingly, Applicants have amended claims 1-12 to reflect such changes. However, it is Applicants' position that such amendments to claims 1-12 do not alter or change in any way the spirit of the inventive concept set forth in the original claims 1-12 and that such amendments are not new matter and will not create an additional burden on the Examiner by requiring a new search. Therefore, it is respectfully requested that the Examiner enter the amendments to claims 1-12 of subject to application and pass such claims to issue.

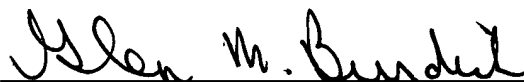
In addition to the above, it is respectfully submitted that newly added claims 13-22 are also proper in order to afford Applicants with the degree of protection to which Applicants are entitled on the inventive concept of the subject application. It is respectfully submitted that the subject matter set forth in newly added claims 13-22 is not new matter,

will not create a burden on the Examiner by requiring a new search, are proper and should be entered. Such is respectfully requested.

In view of the filing of the Terminal Disclaimer herewith, and the comments set forth hereinabove, it is respectfully submitted that the claims now pending in the application are patentable over the art of record. Therefore, it is respectfully requested that the Examiner withdraw the rejection of Applicant's claims 1-12, as amended, and as same applies to newly added claims 13-22, and pass such claims to issue.

This is intended to be a full and complete response to the Office Action mailed February 23, 2004. Should the Examiner have any questions concerning the amendments to claims 1-12, or the addition of newly added claims 13-22, or the remarks set forth herein, the Examiner is invited to call Applicant's attorney to discuss such matters.

Respectfully submitted,



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